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No. 80-189

IN THE SUPREME COURT

OF THE

UNITED STATES

Grant-Billingsley Wholesale Liquor Co., Inc.,
Appellant,

v.

Michael C. Lennen, Secretary of Revenue
For The State of Kansas, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

The Alcoholic Beverage Industry in Kansas operates on the three (3) independent vertical tier system, including suppliers, wholesalers, and retailers; all of whom are licensed private enterprises authorized to do business in the State of Kansas. Kansas is a "license" state as compared with the "monopoly" states in which the state, itself, conducts all or a part of the business of the distribution of alcoholic liquors.

Since 1949 the Kansas law provided for open-wholesaling under which, subject to credit considerations, suppliers sold to all wholesalers. Under the recent statutory amendments L. 1979, Ch. 153, (H.B. 2020), Kansas now provides for distilleries and wineries to enter into written territorial franchise agreements with wholesalers for exclusive territories. House Bill 2020 does permit sales outside of the territory under certain circumstances.

House Bill 2020 promotes interbrand competition. The statute puts no limits on the number of brands or the number or size of territories a wholesaler may contract with a supplier to service. However, preexisting anti-trust provisions of Kansas law govern the activities of this market, just as they govern the activities of other private enterprises. Reference: Kansas Statutes Annotated 50-101 *et seq.* House Bill 2020, provides for alteration in the franchises with thirty (30) days written notice and for reasonable cause (Ref: Kansas Statutes Annotated 41-410(3)).

The Kansas Supreme Court upheld the statute and reversed the Trial Court. The Court in *Colby v. Lennen*, 227 Kan. 179, 606 P.2d 102 (1980) ruled that:

> "1. Pursuant to the Twenty-First Amendment, a state may absolutely prohibit the manufacture, transportation, importation, sale or possession of alcoholic liquors irrespective of when or where produced or obtained, or the use to which they are to be put, and may adopt measures reasonably appropriate to effectuate those prohibitions and excise full police authority in respect to them, unfetered by the due process clause, the equal protection clause or the commerce clause."
>
> 2. The constitutionality of a statute is presumed, all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution."
>
> 3. In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it and if there is any reasonable way to construe the statute as constitutionally valid, that should be done."
>
> 4. In a civil action, the record is examined and it is *held*: The trial court

> erred in holding pertinent sections of House Bill 2020 unconstitutional."

When the United States Supreme Court announced its decision in *California Retail Liquor Dealers Association vs. Midcal Aluminum Company,* 445 U. S. 97, 100 S.Ct. 937, 946 (1980), that case was brought to the attention of the Kansas Supreme Court in connection with a motion for rehearing. The rehearing request was considered, *Midcal* was considered, and no modification of the prior judgment was rendered.

While appellant submits to this court questions assuming and presumed on facts not in the record, as those for consideration--we assert that the singular question presented is whether or not this is an appropriate forum for consideration of the final judgment of the Kansas Supreme Court on the grounds of substantial Federal question inasmuch as the judgment rests on an adequate non-Federal basis.

As administrators of a field of enterprise wrought with the perils of abuse--often a condition found by the courts to be a truism deserving highest consideration--then, if this court rejects our motion, to dismiss or affirm, the issues herein are not those as set forth by appellants, but are rather

> [1] What is the power reserved to the states by the Twenty-First Amendment to the Federal Constitution? Is it a guarantee, as the Court seems to suggest in *Midcal,* when it states:

> "The Twenty-First Amendment grants the states virtually complete control over whether to permit the importation or sale of liquor and *how to structure the liquor distribution system.*" 100 S.Ct. 937 at 946 (1980).

or is it merely an opportunity for the states to prohibit all such traffic within its borders; and

[2] If an anti-trust analysis is to be applied in the instant case, should there not be a complete examination of the actual effect House Bill 2020 has had, and does have on the Kansas market such that the "rule of reason" test as set forth in *Continental T.V., Inc. vs. G.T.E. Sylvania, Inc.*, 388 U. S. 365 (1977), might be applied?

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional and statutory provisions, in pertinent part:

1. United States Constitution, Amendment XXI, §2:

> "The transportation or importation into any State, territory, or possession of the United States for delivery or

use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

2. House Bill 2020 (Kansas Liquor Control Act):

The text of H.B. 2020 is set out in the Jurisdictional Statement of Appellants. Complete copies of the Kansas Liquor Control Act, of which it is a part, and Rules and Regulations adopted thereunder have been provided the Clerk of the Court for distribution.

INTRODUCTION

The question of the strength of the Twenty-First Amendment was briefed and argued before the Kansas Supreme Court, and that court ruled on it directly, upholding the state statute. The Kansas Supreme Court also upheld the statute's constitutionality on other grounds; namely that constitutionality of statutes is presumed, all doubts being resolved in favor of validity and that it's the Court's duty to uphold a statute if reasonably possible to do so.

ARGUMENT AND AUTHORITIES

1. *House Bill 2020 raises only a State issue and gives rise to an inquiry related solely to the Twenty-First Amendment to the United States Constitution.*

The provisions of House Bill 2020 which authorize the designation of exclusive wholesalers and allocated

territories to each wholesaler should be facially reviewed as to whether or not it is a proper exercise under the Twenty-First Amendment to the United States Constitution. The Kansas Supreme Court determined that it was. The designation of wholesalers and territories under this law falls within the express language of the Twenty-First Amendment. This Court as recently as March 1980, commented upon the Twenty-First Amendment and with respect to §2 of that Amendment stated:

> "The Twenty-First Amendment grants the states virtually complete control over whether to permit the importation or sale of liquor and how to structure the liquor distribution system." *California Retail Liquor Dealers Association vs. Midal Aluminum Company*, 445 U. S. 97, 100 S.Ct. 937, 946 (1980).

In a post opinion letter dated March 10, 1980, and signed by attorney Jack B. Owens, Attorney for *Midcal* (who is also counsel for record on behalf of appellant in this cause) to the Honorable Lewis F. Powell, Jr., it was suggested *unsuccessfully* that the Court's above language with reference to the Twenty-First Amendment, be modified to apply only to those situations in which the State itself operates the liquor business, i.e. monopoly states. The reason advanced being the basic anti-trust principles forwarded in that lawsuit. Both the post opinion letter and the Court's rejection are a matter of record in the *Midcal* Case.

Hence, designation of wholesalers and allocation of territories is directly responsive to structuring the liquor distribution system, as left to the states by the Twenty-First Amendment to the United States Constitution. The territorial arrangements under House Bill 2020 have led to an orderly marketing scheme and intense interbrand competition. In regard to this latter point, see the statistics of the Director of the Alcoholic Beverage Control Division, Kansas Department of Revenue at Appendix A which shows an increase of approximately ten thousand line items available for sale in the State of Kansas in the twelve-month period since the introduction of the franchise system to the state. Also, see Appendix B regarding wholesale and retail prices in Kansas under franchising as compared to open-wholesaling.

The state's interest in a distribution system which designates wholesalers and allocates territories is preserving a three-tier scheme which has been in existence in the alcoholic beverage industry for many years throughout the licensed states as a means of preventing abuse of a substance akin to abuse. In this regard see the outstanding work of F. Switzer, *The Three-Tier System of Distribution in the Wine and Spirits Industry*, W.S.W.A. (1975), regarding the three tier system of distribution, a part of the record before the trial court and the Supreme Court of the State of Kansas.

2. *The validity of H.B. 2020 should not be determined on the basis of the antitrust laws.*

Antitrust laws and specifically an analysis of the

"rule of reason" is an inappropriate test as to the constitutionality of a state statute; particularly when the statute in question has been upheld by the Kansas Supreme Court on other grounds as well.

That portion of H.B. 2020 which requires a supplier to appoint an exclusive distributor within a designated territory does not mandate a supplier to violate the law. This Court has acknowledged that vertical distribution schemes similar to H.B. 2020 are not facially violative of the antitrust laws. In *Continental T.V., Inc. vs. G.T.E. Sylvania, Inc.*, 388 U. S. 365, (1977) the court overruled its holding of *United States vs. Arnold, Schwinn and Co.*, 433 U. S. 36 (1977), that territorial confinement and customer allocation were illegal, *per se.* Thus, the instant case is not one where antitrust practices are regarded illegal, *per se,* without regard to the market power of the parties, the purpose of the restraint, or alleged good business reason for the practice. See *Northern Pacific Railroad vs. United States*, 356 U. S. 1 (1958). In the instant cause "rule of reason enforcement," which *Sylvania* substituted for *Schwinn's, per se* rule, taking a wide variety of factors into account, including market power, purpose and business practices, should be used in determining the illegality alleged. Under §1 of the Sherman Act, 15 U.S.C. §1, the applicable test to determine whether a restraint is unreasonable or not, is to be the "rule of reason."

Factual determinations under §1 of the Sherman Act can only be made pursuant to a full evidentiary hearing taking into account all the circumstances of the case. That

has not been done here. Business activities subjected to antitrust analysis and specifically the "rule of reason" test cannot be evaluated in this type of proceeding. *White Motor Company vs. United States*, 372 U. S. 253, 259, 263-64 (1963).

A rule of reason examination under the antitrust laws has, as best we can determine, never been used to invalidate a state law. Application of the rule of reason does not lend itself to summary adjudication. *White Motor Company vs. United States, Id.* at p. 259.

3. *Midcal inapplicable to case at bar.*

Midcal "presented a successful antitrust challenge to California's resale price maintenance and price posting statutes for the wholesale wine trade. The issue in this case [was] whether *those* state laws are shielded from the Sherrman Act by either the "state action" doctrine of *Parker v. Brown,* 317 U. S. 341 (1943) or §2 of the Twenty-First Amendment." *Midcal, Id.* at p. 97.

Wholesale prices as established by suppliers under "fair trade" doctrines are not at issue in *Colby*. Alleged operational impediments upon the Kansas marketplace was at issue.

In Kansas the State's involvement in all phases of each of the three-tiers of its distribution system is sufficient to establish antitrust immunities under *Parker*. Who better than the highest court of the state to determine that question? The distribution system is founded upon clearly

articulated and affirmatively expressed state policies, including temperance (although same was not true in *Midcal*). The state of Carey Nation is 46th in adult per capita consumption of distilled spirits of all the states, in this regard see Appendix C. Kansas distributes solely through package stores which may not offer other commodities nor may they promote their products. And by constitutional mandate "the open-saloon shall be and is hereby forever prohibited." Article 15, §10 Constitution of the State of Kansas. By a complex set of laws and regulations having the force and effect of law there is active supervision of supplier, distributor, and retailer practices and transactions. A complete evidentiary hearing which has *not* been conducted, would reveal, distinquishable from *Midcal*, that a pointed re-examination of the marketplace occurs, and such examination is by law a responsibility of state officials in order to preserve an orderly market free from the abuses akin to alcoholic liquors. In Kansas the system of promoting temperance and protecting the three-tier system is more substantial than the national policy of competition. That view could be supported by evidence, were it that such a fact finding process had occurred.

4. *Case at Bar Premature.*

Whether or not the designation of a distributor results in unreasonable restraint is factually premature and inappropriate in this type of proceeding. While the *Sylvania* majority opinion suggests that the court may in the future accept more rigorous, *per se* treatment for selected applications of territorial and customer restrictions, this is not the appropriate case for that finding in summary

fashion. The court stated in *Northern Pacific Railway Co. v. U. S.* 456 U. S. 1 (1958), that to make a departure from the "rule of reason" standard must be based upon demonstrable economic effects rather than--as in *Schwinn*--upon formalistic line drawing. *Sylvania, Id.* at pages 58-59.

This court has rejected the notion that a state law can be invalidated on the basis of assumed presumed or speculative facts. *Joseph E. Seagram & Sons, Inc. vs. Hofstetter*, 384 U. S. 35, 46 (1966). There is a strong policy against invalidating the state regulatory schemes in the absence of a clear showing of irreconcilable conflict with federal law. *Swift & Co. vs. Wickham*, 364 Fed. 2d 241, 246 (Second Circuit 1966) *cert. denied*, 385 U. S. 1036, 87 S.C. 776; 17 L. Edition 2nd 683 (1967).

In reality, appellant's main complaint is that they were not designated as distributor of products of their choice. It is the complaint of "disgruntled businessmen" as it was coined before the trial court. Appellants express no desire to necessarily return to "open wholesaling." It is that the appellants desire the right to choose and pick, which results in no less of a designation scheme. Exclusivity of territory and territorial allocations are secondary to the appellant's real concern.

5. "Open Wholesaling" vs. Designation of Distributors.

Kansas has gone through the transition from "open wholesaling" to the selection of exclusive distributors within a designated territory after numerous hours of

legislative contemplation and study. The open wholesaling concept led to a stagnation of interbrand competition. In this regard see again Appendix A showing the increase in brand line items (all items by size and brand). Open wholesaling of alcoholic beverages exists only in two other markets--Oklahoma and Minnesota. In Oklahoma the number of wholesalers has declined in recent years from twenty to six. It is self-evident that a franchise wholesaler will commit resources and manpower to develop and protect specific brands, which of marketing necessity will create interbrand competition. New brand owners and new brands entering the marketplace use designated distributors in order to induce competent and aggressive distributorships to make investments of capital and labor necessary in the distribution of new products. Also, established brand owners use designated distributors to induce distributors to engage in promotional activities or provide services necessary, as may be authorized under law, to the efficient marketing of their products. In this regard it is appropriate to acknowledge the redeeming virtues attributable to vertical restructions. Vertical restrictions promote interbrand competition by allowing the manufacturer to achieve certain efficiencies in the distribution of his product. These redeeming virtues are implicit in every decision sustaining verticle restrictions under the rule of reason. *G.T.E. Sylvania, Inc., Id.* at 5455, states:

> "Vertical restrictions promote interbrand competition by allowing the manufacturer to achieve certain

efficiencies in the distribution of his products. These 'redeeming virtues' are implicit in every decision sustaining vertical restrictions under the rule of reason. Economists have identified a number of ways in which manufacturers can use such restrictions to compete more effectively against other manufacturers. See, e.g., Preston, Restrictive Distribution Arrangements: Economic Analysis and Public Policy Standards, 30 Law & Contemp. Prob. 506, 511 (1965). For example, new manufacturers and manufacturers entering new markets can use the restrictions in order to induce competent and aggressive retailers to make the kind of investment of capital and labor that is often required in the distribution of products unknown to the consumer. Established manufacturers can use them to induce retailers to engage in promotional activities or to provide service and repair facilities necessary to the efficient marketing of their products, such as automobiles and major household appliances. The availability and quality of such services affect a manufacturer's goodwill and the competitiveness of his product. Because of market imperfections such as the so-called 'free rider' effect, these services might not be provided by retailers in a purely competitive situation, despite the fact that each retailer's benefit would be greater if all provided the services than if none did." Posner, supra, n. 13., at 285; cf. P. Samuelson, Economics 506-507 (10th ed. 1976)."

6. *Affirmation Provisions under Kansas Law providing pointed re-examination of prices.*

There is no valid relationship between the selection of distributors under the amendments of the Kansas Liquor Control Act set forth in House Bill 2020 and the potential for higher resale prices to the consumer. Under the Kansas statutory provisions, as compared to California before *Midcal*, a supplier exercises little or no control over the ultimate price of his brands. House Bill 2020 contains the provision at §6 which was part of the preexisting law which states as follows:

> "That sales prices of alcoholic liquor sold by manufacturers and others to distributors licensed in this state should be no higher thatn the lowest price for which the same is sold by distributors anywhere in the Continental United State." (Now Kansas Statutes Annotated 1979 Supp. 41-4111 (a)).

That provision, commonly referred to as "affirmation," is intended to assure the residents of this state that the price of alcoholic beverages is at least as low as the same brand being sold within any other jurisdiction in the United States. Therefore, in the State of Kansas the price from the manufacturer to a distributor is totally dictated by State law designed to assure the lowest price possible. In view of affirmation, the testimony and conclusions reached by Dr. Terrell, as set forth on page 11 of the jurisdictional statement, relative to the premise of H.B.

2020 leading to higher consumer prices, is totally without merit. In particular, reference Appendix B prepared by the Kansas Wine and Spirits Wholesalers Association which demonstrates that wholesale prices in Kansas as compared with those of surrounding states are compatible or lower than those of its neighbor, as of one year after franchising became the law in Kansas. Effectively, the distributor designation provision of H.B. 2020, which appellants attack, has no influence over the pricing of alcoholic beverages in the State of Kansas. The structure of affirmation has been upheld by this court in *Joseph E. Seagrams and Sons, Inc. vs. Hofstetter*, 384 U. S. 35 (1966).

Also, certain of the statistical data in Appellant's statement is, we believe, misleading. The *Kansas City Star* article, "Law Hasn't Cut Kansas Liquor Cost" is referenced; but that article is not an extensive survey based on proper economic research. Further, the data at page 10 and in Appendix F are based on case shipments under "open-wholesaling" when Kansas only had one-third the line items (see Appendix A) available for retail sale. And Appendix F is misleading inasmuch as it implies that a given single firm has a share of the market place in those percentages as set forth in column one. Not true. Those figures, again based on the "open-wholesaling" system shipments, have applicability to different firms. For example, Firm A might have allegedly 90% of rum sales, but Firm B has 58.9% sales of cordials, and no listing is made to show that Firms C, D and E have in excess of 50% of wine sales. Wine comprises a significant share of market sales, and data relative thereto is not provided this Court. Were it not that Appellants have attempted to provide

data not in evidence below, we would likewise not have to do so to demonstrate the fragility of their position. The transformation from the concept of "open-wholesaling," which has existed only in three states and which resulted in the decline of the number of wholesalers, stagnation of brand promotion, minimal interbrand competition, resistance to the introduction of new brands, and a weakening of financial structures, was necessary *and was desired by the elected legislature.* In this regard see the report of the Interim Committee on Liquor Laws, a part of the record before the trial court. And there is ample authority, both legal and economic, to support the argument that designated distributors will commit more resources, manpower and active promotion which result in greater interbrand competition. This court endorsed such notion as quoted in *G.T.E. Sylvania, Inc. supra* at page 12. Further, the authority to choose the distributor is a more promising opportunity for the introduction of new brands. Appendixes B-1 and B-2 draw into question the econimic forcasts made at the trial court level as set forth at page 11 of Appellants' statement.

7. *State Supervision and Market Consentration.*

Appellants contend H.B. 2020 lacks state supervision. This contention is unjustified. Brand owners doing business in the State of Kansas must be authorized to enter this marketplace, must register brands, must comply with filing and recording procedures on a monthly basis, including verified statements that the price at which they are selling their products to Kansas distributors is as low as any other price being charged for the same product in the

Continental United States. Further regulations regarding the allocation and designation of territory have been promogated as authorized by the statute. Provided private parties engage in lawful activities, their conduct is at all times subject to private party antitrust actions or governmental actions pursuant to the antitrust laws both federal and state governments.

Appellants contend House Bill 2020 will result in market concentration by a few distributors. It is a reasonable expectation that whether a brand owner chooses a distributor or a distributor chooses its brands that certain wholesalers will attain greater success that others. There is nothing unique about the varying success of wholesalers in the alcoholic beverage industry or in any other industry. In fact, through a thorough fact finding inquiry into the wholesale liquor business throughout the United States there would be shown a reduction in the number of wholesalers. However, such cannot be proven without a full complete evidentiary proceeding at a trial court level under a properly brought antitrust cause of action. The fact that the wholesale liquor business becomes concentrated is more accurately the result of aggressive merchandising and management rather than being caused by unlawful activities. Further, this concentration is also a by-product of the strict statutory criteria governing those who may be licensed as distributors of alcoholic liquors in the State of Kansas. In this regard, see Kansas Statutes Annotated 41-311, which provides minimum residency requirements, absense of felony convictions and other such prohibitions, governing those who may be licensed.

CONCLUSION

Appellants urge this court to apply the doctrines of *Midcal* to the case at bar. Paradoxically--how is this court to apply a string of cases dealing with price resale maintenance provisions on the subject of the anti-trust validity of lawfully enacted and promulgated statutes pursuant to the Twenty-First Amendment of the Federal Constitution relating to vertical restrictions upon a system of distribution? The two subjects are not harmonious, the California factual circumstance and Kansas factual circumstance differ and thus the *Midcal* Case does not have direct applicability to the case at hand. In the words of appellants, the only question before the court on a Federal appeal basis is the validity under Federal anti-trust laws of the territorial exclusivity arrangements, governing a product which history has taught us must be supervised both in its trafficing and use.

The enacting of H.B. 2020 does not eliminate intra-brand competition inasmuch as different territories can be established in Kansas between suppliers and wholesalers, thus allowing territorial competition between brands. In fact, this occurs. There are price differentials for particular products between territories across the state. There is no restriction upon consumers or private clubs prohibiting them from purchasing only from licensed retailers in the same geographical territory in which they reside.

There is no absence of state supervision. If entrenchment of the wholesale market occurs (and it has not) it is not because of the enacting of H.B. 2020; rather, it is due

to the strict qualifying criteria which prevade the Liquor Control Act. The applicability of preceding years' percentages and case sales to alleged market share are inappropriate inasmuch as the brands for alcoholic liquor have drastically increased in the twelve (12) months since the effective date of the amended law.

The questions are not substantial inasmuch as the *Midcal* paradox of applicability does not require reversal of the Kansas Courts' Twenty-First Amendment ruling. The Kansas Supreme Court made its determination on reasons other than a federal question. House Bill 2020 is not invalid on its face under the federal anti-trust law; and, on the record presented there is insufficient evidence to make a determination of such invalidity.

There is much argument in the jurisdictional statement that is unsupported by the record. The introduction of new evidence which was not before the court at the time of trial, or the subsequent appeal, confirms that this case lacks a sufficient evidentiary basis upon which the court can make the determination appellants desire.

Thus, for the foregoing reasons a motion to dismiss is appropriate, and a motion to affirm is likewise appropriate.

Respectfully submitted,

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APPENDIX A

COMPARISON OF LINE ITEMS AVAILABLE FOR SALE IN KANSAS 1978-1979-1980

1. **Definitions:**

A. **"Alcoholic Liquor"**: Means alcohol, spirits, wine, beer, and every liquor or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any beer or cereal malt beverage containing not more than three and two-tenths percent (3.2%) alcohol by weight.

(1) **"Alcohol"** means the product of distillation of any fermented liquor, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(2) **"Spirits"** means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whisky, gin or other spiritous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(3) **"Wine"** means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries, or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

(4) **"Beer"** when its meaning is not enlarged, modified, or limited by other words, means a beverage, containing more than three and two-tenths percent (3.2%) alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction or barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content. NOTE: Beer is not included as a line item in this report.

B. Line Item: Line item is a brand item (container) of alcoholic liquor offered for sale in the Kansas market. Line items are considered from the following viewpoint:

(1) From the Supplier point-of-view, a line item is a brand item (container) of alcoholic liquor, authorized for sale in Kansas, posted by the supplier, available to the wholesaler franchisee, for sale to the retail licensee.

(2) From the Wholesaler (Franchisee) point-of-view, a line item is a brand item (container) of alcoholic liquor, authorized for sale in Kansas, posted by the supplier, posted by the wholesaler, and is offered for sale to the retail licensee.

2. Line Items available in the State of Kansas on July 1, 1978, 1979 and 1980 were:

1978

Total Line Items: 3,964

1979

Total Line Items: 4,366

1980

Total Line Items: 14,883

3. Total number of Spirits and Wine Suppliers furnishing the above Line Items:

YEAR	SPIRIT AND WINE SUPPLIERS
1978	93
1979	99
1980	169

Source: Office of the Director of Alcoholic Beverage Control; Kansas Department of Revenue

APPENDIX B-1

COMPARISON OF CONSUMER PRICES FOR BETTER SELLING BRANDS OF WINE & CHAMPAGNE

SEPTEMBER 1979 AND 1980

OPEN WHOLESALING

	Size	September 1979	September 1980 (Note 2)	September 1980 (Franchise)
Gallo (Chablis Blanc, Hearty Burgundy, Burgundy, Rhine, Pink Chablis, Red Rose)	3.0	$ 6.87	$ 7.54	$ 6.99
	1.5	3.99	4.62	3.99
T. J. Swann	750	1.90	2.10	1.91
Inglenook Navalle (Burgundy Chablis, Rhine, Vin Rose)	1.5	4.22	5.05	4.20
Manischewitz Cream Red & White Concord	750	3.31	3.69	2.80
Paul Masson (Burgundy, Chablis, Rhine, Rose)	3.0	8.12	8.81	7.99
	1.5	4.75	5.16	4.98
Almaden Mtn Wines (Red Burgundy, Chablis, Red Claret, Vin Rose, Rhine, Sauterne)	3.0	7.25	8.36	7.09
	1.5	4.34	5.14	4.15

OPEN WHOLESALING

	Size	September 1979	September 1980 (Note 2)	September 1980 (Franchise)
Mogen David Concord	1.5	4.89	5.20	5.08
Taylor Lake Country Wines	1.5	5.42	5.71	4.49
Blue Nun Liebfraumilch	750	5.80	6.07	5.49
Cella Lambrusco	750	3.10	3.69	2.99
Mateus Rose	750	4.94	4.79	4.89
Yago Sant'Gria	750	3.45	3.57	2.99
Riunite Lambrusco	750	3.13	3.29	3.09
Jacques Bonet Champagne	750	3.10	3.44	3.29
Andre Champagne	750	3.10	3.44	3.09
Totals		$81.68	$89.67	$79.50
Percent Increase (Decrease) Over Sept. 1979			9.78%	(2.67%)

Notes:

(1) The above brands of wine & champagne accounted for 540,420 cases or 76% of the wine and champagne shipped into Kansas in 1979

(2) Adjusted for increased freight charges and supplier price increases in the past 12 months

COMPARISON OF CONSUMER PRICES FOR BETTER SELLING BRANDS OF SPIRITS

SEPTEMBER 1979 AND 1980

	1.0 LITER SIZE OPEN WHOLESALING			750 ML SIZE OPEN WHOLESALING		
	September 1979	September 1980 (Note 2)	September 1980 (Franchise)	September 1979	September 1980 (Note 2)	September 1980 (Franchise)
Old Charter, 8 Year	$ 9.27	$ 9.59	9.49	7.14	7.42	7.39
Ancient Age	7.76	8.02	7.50	6.11	6.33	5.90
Jim Beam	7.41	7.37	7.29	5.76	5.63	5.75
Old Taylor	8.32	8.51	8.36	6.35	6.56	6.49
Jack Daniels Black	11.27	11.72	11.94	8.64	8.95	9.12
Ten High	6.67	6.57	6.33	5.14	5.47	5.54
Wellers	9.22	9.77	8.99	7.12	7.56	7.48
Mattingly & Moore	6.08	6.70	5.79	4.85	5.34	4.79
Seagrams 7 Crown	8.09	8.32	8.38	6.11	6.30	6.39
J & B Scotch	12.41	14.00	12.98	9.55	10.75	9.99
Cattos Gold	6.92	8.10	6.98	5.61	6.31	5.99
J. W. Dant Scotch	8.12	8.52	7.99	6.20	6.46	6.55
Cutty Sark	12.23	14.01	12.89	9.08	10.48	9.49
Canadian Mist	7.81	8.16	8.49	5.99	6.31	6.49
Canadian Club	10.61	10.66	10.59	8.01	8.06	8.23
Seagram's V. O.	10.60	10.67	10.59	8.01	8.07	7.98
Popov 80 Vodka	5.50	5.95	5.39	4.35	4.64	4.39
McCormick 80 Vodka	5.69	5.77	5.49	4.46	4.58	4.67
Smirnoff 80 Vodka	7.34	7.82	7.79	5.61	5.97	5.99

	1.0 LITER SIZE OPEN WHOLESALING			750 ML SIZE OPEN WHOLESALING		
	September 1979	September 1980 (Note 2)	September 1980 (Franchise)	September 1979	September 1980 (Note 2)	September 1980 (Franchise)
Beefeater Gin	10.98	12.80	11.99	8.49	10.48	9.28
Seagram's Gin	7.32	7.38	7.29	5.54	5.61	5.68
Gilbey's Gin	6.94	6.83	6.70	5.27	5.34	5.25
Bacardi Rum	7.36	7.84	7.79	5.83	6.21	5.99
Castillo Rum	6.19	6.39	5.99	4.82	4.97	3.99
Jose Cuervo White Tequila	8.53	9.40	9.39	6.70	7.28	7.29
Don Emilio Tequila	6.41	6.28	5.20	4.95	5.25	3.90
Kahlua Coffee Liqueur	14.82	15.39	15.19	10.27	11.72	11.96
TOTALS	$229.87	$242.54	$232.79	$175.96	$188.05	$181.96
Percent Increase Over September 1979	-	5.51%	1.27%	-	6.87%	3.41%

Notes:

(1) Above spirit brands accounted for 661,751 cases or 52% of the spirit shipments into Kansas in 1979

(2) Adjusted for increased freight charges and supplier price increases in the past 12 months

Source: Kansas Wine and Spirits Wholesaler Association

APPENDIX B-2

COMPARISON OF WHOLESALER PRICES TO RETAILER IN KANSAS AND MISSOURI JULY 1980

Source: Kansas and Missouri Wholesaler Price Books for July 1980; Kansas Wine and Spirits Wholesalers Assn.

Item-Bourbon	Size	Kansas Company	Kansas Case Price	Missouri Case Price	Kansas Bottle Price to Retailer	Missouri Bottle Price to Retailer
Old Charter 10 yr.	1.75	Standard	$ 87.30	$ 84.50	$14.70	$14.58
Old Charter 10 yr.	7.50	Standard	78.00	75.95	6.60	6.60
Old Charter 8 yr.	1.75	Standard	72.36	66.99*	12.21	11.67*
Old Charter 8 yr.	7.50	Standard	67.80	63.50*	5.75	5.50*
Old Charter 8 yr.	2.00	*Item is 7 yr. old	83.84	81.49*	1.78	1.76*
Old Forrester 86°	1.75	Standard	66.72	64.99	11.27	11.34
Old Forrester 86°	7.50	Standard	63.96	64.99	5.43	5.67
Old Forrester 86°	2.00	Standard	79.20	76.99	1.70	1.67
Early Times	1.75	Standard	57.36	62.99	9.71	11.00
Early Times	1.L	Standard	71.52	73.49	6.06	6.37
Early Times	7.50	Standard	50.04	57.49	4.27	5.04
Early Times	5.00	Standard	78.00	79.99	3.33	3.46
Early Times	2.00	Standard	68.16	69.99	1.47	1.52
Ezra Brooks 7 yr.	1.75	Famous	65.34	66.99	11.04	11.67
Ezra Brooks 7 yr.	Qts.	Famous	71.52	69.99	6.06	6.08
Ezra Brooks 7 yr.	7.50	Famous	57.48	57.99	4.89	5.08
Ezra Brooks 7 yr.	Pts.	Famous	74.40	73.99	3.18	3.21

Item-Bourbon	Size	Kansas Company	Kansas Case Price	Missouri Case Price	Kansas Bottle Price to Retailer	Missouri Bottle Price to Retailer
Cabin Still	1.75	Famous	$ 59.28	$ 52.99	$10.03	$ 9.33
Cabin Still	1.L	Famous	65.88	59.99	5.59	5.25
Cabin Still	7.50	Famous	53.76	49.99	4.58	4.42
Cabin Still	Pt.	Famous	70.56	64.99	3.02	2.83
Cabin Still	2.00	Famous	68.16	64.99	1.47	1.41
W. L. Waller	1.75	Famous	71.40	73.99	12.05	12.83
W. L. Waller	1.L	Famous	82.68	85.99	6.99	7.42
W. L. Waller	7.50	Famous	65.88	66.99	5.59	5.83
W. L. Waller	5.00	Famous	83.76	87.99	3.57	3.76
W. L. Waller	2.00	Famous	83.04	81.99	1.78	1.76
Jim Beam 4 yr. 80°	1.75	Standard	57.84	55.50	9.79	9.65
Jim Beam 4 yr. 80°	7.50	Standard	52.44	54.99	4.47	4.54
Jim Beam 4 yr. 80°	5.00	Standard	68.88	67.40	2.95	2.99
Jim Beam 4 yr. 80°	2.00	Standard	64.32	64.99	1.39	1.35
Item-Scotch						
Dewars White Label Scotch	1.75	Sunflower	93.30	104.99	15.55	18.00
Dewars White Label Scotch	7.50	Sunflower	93.24	98.99	7.77	8.25
Dewars White Label Scotch	10th	Sunflower	102.96	99.99	4.37	4.29
Dewars White Label Scotch	2.00	Sunflower	119.52	123.99	2.56	2.65
Haig Pinch Scotch	1.75	Sunflower	151.26	158.99	25.36	27.00
Haig Pinch Scotch	7.50	Sunflower	129.36	No Price	10.88	No Price
Haig Pinch Scotch	10th	Sunflower	139.68	147.99	5.90	6.29

Item-Scotch	Size	Kansas Company	Kansas Case Price	Missouri Case Price	Kansas Bottle Price to Retailer	Missouri Bottle Price to Retailer
J & B Scotch	Gal.	Standard	100.35	**91.99**	33.45	**31.67**
J & B Scotch	1.75	Standard	**106.44**	106.99	**17.89**	18.33
J & B Scotch	Qts.	Standard	**110.76**	118.99	**9.33**	10.17
J & B Scotch	7.50	Standard	**92.04**	98.99	**7.77**	8.50
J & B Scotch	2.00	Standard	**120.48**	123.99	**2.56**	2.65
J. Walker Black Scotch	1.75	Famous	**$141.18**	$152.99	**$23.68**	$25.99
J. Walker Black Scotch	1.L	Famous	**171.36**	171.99	14.38	**13.99**
J. Walker Black Scotch	7.50	Famous	134.04	**133.99**	**11.27**	11.42
J. Walker Black Scotch	10th	Famous	**135.98**	145.99	**5.75**	6.18
J. Walker Black Scotch	2.00	Famous	165.12	**163.99**	3.49	**3.48**
J. Walker Red Scotch	Gal.	Famous	**97.23**	103.39	**32.71**	36.17
J. Walker Red Scotch	1.75	Famous	**103.62**	104.99	**17.42**	18.00
J. Walker Red Scotch	Qt.	Famous	**110.76**	113.99	**9.33**	9.75
J. Walker Red Scotch	7.50	Famous	**92.04**	98.99	**7.77**	8.50
J. Walker Red Scotch	10th	Famous	**91.20**	99.99	**3.88**	4.30
J. Walker Red Scotch	2.00	Famous	121.09	**109.99**	2.55	**2.40**
Chivas Regal	Gal.	Standard	**162.48**	171.26	**54.46**	58.09
Chivas Regal	1.75	Standard	**153.12**	154.55	**25.67**	26.23
Chivas Regal	7.50	Standard	135.00	**134.55**	**11.35**	11.47
Chivas Regal	10th	Standard	**141.60**	144.75	**5.98**	6.16
Chivas Regal	2.00	Standard	165.12	**164.99**	**3.49**	3.50
Inverhouse Scotch	1.L	Famous	**63.96**	71.99	**5.43**	6.25
Inverhouse Scotch	7.50	Famous	**51.00**	54.99	**4.35**	4.78
Inverhouse Scotch	10th	Famous	61.20	**56.99**	2.63	**2.47**
Inverhouse Scotch	2.00	Famous	64.32	**63.99**	**1.39**	1.41

Item-Gin	Size	Kansas Company	Kansas Case Price	Missouri Case Price	Kansas Bottle Price to Retailer	Missouri Bottle Price to Retailer
Beefeater Gin	Gal.	Standard	$116.70	$102.75	$38.90	$35.14
Beefeater Gin	1.75	Standard	92.40	92.30	15.55	15.84
Beefeater Gin	Qts.	Standard	99.48	101.99	8.39	8.75
Beefeater Gin	7.50	Standard	85.44	83.80	7.22	7.24
Beefeater Gin	2.00	Standard	105.12	103.95	2.24	2.26
Tanquerary Gin	1.75	Famous	92.40	88.69	15.55	15.88
Tanquerary Gin	Qts.	Famous	98.64	98.98	8.32	8.66
Tanquerary Gin	7.50	Famous	85.44	81.34	7.22	7.16
Tanquerary Gin	Pts.	Famous	102.48	101.43	4.35	4.44
Tanquerary Gin	2.00	Famous	105.12	99.47	2.24	2.17
Gordens Gin	1.75	Sunflower	57.84	56.85	9.79	10.17
Gordens Gin	1.L	Sunflower	65.76	63.70	5.58	5.67
Gordens Gin	7.50	Sunflower	50.16	49.99	4.27	4.50
Gordens Gin	5.00	Sunflower	66.72	64.68	2.86	2.87
Gordens Gin	2.00	Sunflower	63.36	63.70	1.39	1.42
Gordens Vodka	1.75	Sunflower	48.00	45.05	8.15	8.17
Gordens Vodka	1.L	Sunflower	52.80	49.00	4.50	4.42
Gordens Vodka	7.50	Sunflower	42.48	40.57	3.64	3.70
Gordens Vodka	2.00	Sunflower	51.84	49.99	1.15	1.10
Kahlua Coffee Liq.	1.75	Sunflower	117.72	119.79	19.77	19.95
Kahlua Coffee Liq.	1.L	Sunflower	136.68	138.99	11.49	12.04
Kahlua Coffee Liq.	2.00	Sunflower	119.04	125.99	2.55	2.63
Canadian Mist	1.75	Standard	60.36	64.99	10.57	11.33
Canadian Mist	1.L	Standard	72.48	74.95	6.14	6.48
Canadian Mist	7.50	Standard	54.72	56.99	4.66	4.99
Canadian Mist	5.00	Standard	78.00	77.95	3.33	3.37
Canadian Mist	2.00	Standard	68.16	69.95	1.47	1.52

Item-Brandy	Size	Kansas Company	Kansas Case Price	Missouri Case Price	Kansas Bottle Price to Retailer	Missouri Bottle Price to Retailer
E. & J. Brandy	1.75	Sunflower	$ 61.56	$ 61.49	$10.41	$10.75
E. & J. Brandy	1.L	Sunflower	**71.52**	72.49	**6.06**	6.29
E. & J. Brandy	7.50	Sunflower	**57.36**	58.49	**4.88**	5.12
E. & J. Brandy	5.00	Sunflower	**78.00**	79.99	**3.33**	3.46
E. & J. Brandy	2.00	Sunflower	**70.56**	71.99	**1.54**	1.56
Almaden Brandy	1.75	Famous	58.32	**54.99**	9.87	**9.57**
Almaden Brandy	Qts.	Famous	61.20	**59.99**	**5.20**	**5.20**
Almaden Brandy	10th	Famous	53.76	**52.99**	2.32	**2.31**
Paul Masson Brandy	1.75	Standard	63.00	**62.99**	**10.65**	11.00
Paul Masson Brandy	7.50	Standard	**57.48**	57.99	**4.89**	5.10
Paul Masson Brandy	2.00	Standard	**60.96**	71.99	**1.27**	1.55
CONCLUSIONS		Case Mo. Lower	49	Bottles Mo. Lower		27
Number of Spirits Items Compared: 101		Cases Kan's Lower	52	Bottles Kan's Lower		74
Bold Face = lower price			101			101
Item-Wine						
Paul Masson	1.5	Standard	**19.62**	22.45	**3.42**	4.25
Gamay Rose-Reisling French Colombard	7.50	Standard	**22.56**	26.95	**1.98**	2.50
Paul Masson Barbara	1.5	Standard	**16.02**	22.45	**2.67**	4.25
Paul Masson Barbara	7.50	Standard	**22.56**	26.95	**1.98**	2.50

Item-Wine	Size	Kansas Company	Kansas Case Price	Missouri Case Price	Kansas Bottle Price to Retailer	Missouri Bottle Price to Retailer
Paul Masson	1.5	Standard	$ 15.00	$ 22.45	$ 2.50	$ 4.25
Ruby Cabernet	7.50	Standard	22.56	26.95	1.98	2.50
Paul Masson						
Cabernet Sauvignon	7.50	Standard	39.12	41.95	3.39	3.70
Pinot Noir	7.50	Standard	35.04	36.95	3.02	3.30
Pinot Blanc	7.50	Standard	35.04	36.95	3.02	3.30
Pinot Chardonney	7.50	Standard	44.04	44.95	3.77	3.95
Pinot Chardonney	3.75	Standard	47.28	50.95	2.05	2.25
Paul Masson Carafes						
Burgundy-Rose-Chablis	1.L	Standard	27.48	31.50	2.39	2.88
Paul Masson Sparkling						
Champagne Brut Extra Dry	1.5	Standard	52.62	53.99	8.92	9.50
Pink-Cold Duck	7.50	Standard	52.32	53.99	4.46	4.75
Sparkling Burgundy	3.75	Standard	46.08	59.50	1.92	2.60
Almaden Mountain Wines	4.L	Famous	20.76	26.49	5.49	7.22
Red Burgundy-Red Claret	3.L	Famous	18.28	22.49	4.87	6.22
Rhine-White-Chablis	1.5	Famous	16.20	20.99	2.85	3.90
White Sauterne-Nectar Rose	7.50	Famous	20.16	23.99	1.78	2.20
Red Claret	3.75	Famous	27.60	26.49	1.23	1.20
Almaden Classic Varitals	7.50	Famous	33.84	39.49	2.92	3.49
Cabernet Sauvignon	3.75	Famous	40.80	42.49	1.78	1.87
Johannisberg Reisling	7.50	Famous	34.08	39.49	2.94	3.49
Pinot Noir-Pinot Chardonnay	3.75	Famous	40.56	42.49	1.77	1.87

Item-Wine	Size	Kansas Company	Kansas Case Price	Missouri Case Price	Kansas Bottle Price to Retailer	Missouri Bottle Price to Retailer
Almaden Sparkling Wines						
Brut Extra Dry,	7.50	Famous	$ 51.96	$ 56.49	$ 4.43	$ 4.99
Pink Sparkling Burg.	3.75	Famous	55.44	59.99	2.39	2.59
Blanc de Blanc	7.50	Famous	60.48	65.99	5.14	5.79
Gallo Table Wines	3.L	Sunflower	18.84	19.29	5.01	5.57
Hearty Burg.-Chablis Blanc	1.5	Sunflower	15.54	17.15	2.74	3.30
Rhine-Red Rose	7.50	Sunflower	17.64	19.50	1.57	1.87
Gallo Mountain Wines	3.L	Sunflower	16.36	19.29	4.39	5.57
Vin Rose-Rhinegarten	1.5	Sunflower	14.70	17.50	2.60	3.42
Chianti	7.50	Sunflower	15.96	19.50	1.43	1.87
Gallo Dessert Wines						
Livingston Creme Sherry,	1.5	Sunflower	16.74	16.29	2.94	3.24
Tawny Port, Very Dry Sherry	7.50	Sunflower	17.64	16.59	1.57	1.62
Gallo Dessert Wines	3.L	Sunflower	19.36	No Price	5.14	No Price
White Port-Sherry-Muscatel	1.5	Sunflower	15.54	15.69	2.74	3.11
Port-Cream Sherry	7.50	Sunflower	15.96	15.99	1.43	1.58
C.P.O. Sherry	3.75	Sunflower	17.52	15.99	.81	No Price
Gallo Varietal Wines						
Barbara	1.50	Sunflower	16.86	18.85	2.94	3.64
Barbara	7.50	Sunflower	17.64	21.49	1.57	2.04
Rose-Chenin Blanc	1.50	Sunflower	18.42	18.99	3.22	3.64
French Colombard	7.50	Sunflower	20.16	21.49	1.78	2.04
Sauvignon Blanc	1.50	Sunflower	20.46	20.29	3.56	3.88
Sauvignon Blanc	7.50	Sunflower	22.56	23.39	1.98	2.20

Item-Wine	Size	Kansas Company	Kansas Case Price	Missouri Case Price	Kansas Bottle Price to Retailer	Missouri Bottle Price to Retailer
Andre Champagnes-Dry-Cold Duck-Pink-Sparkling Burg.	7.50	Sunflower	$ 24.00	$ 23.69	$ 2.26	$ 2.24
Reunite Wines White-Rose-Red	1.5	Sunflower	24.60	25.25	4.25	4.66
	7.50	Sunflower	25.92	26.99	2.26	2.50
Bell Agio	1.5	Sunflower	24.00	21.99	4.11	4.07
	7.50	Sunflower	25.08	23.52	2.19	2.22

CONCLUSIONS
Number of Wine Items Compared: 50
Bold Face = lower price

Case Prices Missouri Lower	8	Bottle Prices Missouri Lower	3
Case Prices Kansas Lower	42	Bottle Prices Kansas Lower	46
	50		49*

*Mo. did not post bottle price on 3.75M size Gallo Dessert Wines

APPENDIX C

1. Adult per capita, based on legal drrinking age, consumption (Wine gallons). Extracted from The Liquor Handbook, A Gavin-Jobson Publication 1980.

States in Order of Ranking 1979	Adult Per Capita Consumption (Wine Gallons) 1979	1978
1. Nevada	9.65	10.87
11. Colorado	3.63	4.29
36. Nebraska	2.45	2.50
40. Missouri	2.28	2.34
45. Oklahoma	2.09	2.42
46. Kansas	2.09	1.93
51. Arkansas	1.67	2.12
Total U. S.	2.99	3.01

2. Apparent consumption of Distilled Spirits in Wine Gallons, 1975-1979: Extracted from Distilled Spirits Council of the U. S. Inc. publication 1975-1979:

	1975	1976	1977	1978	1979
Kansas	1.29	1.27	1.25	1.27	1.39
Nebraska	1.76	1.76	1.73	1.71	1.70
Colorado	2.49	2.48	2.32	2.71	2.47
Missouri	1.61	1.48	1.46	1.54	1.52
Oklahoma	1.54	1.41	1.62	1.61	1.62
Nevada	6.92	7.11	7.21	6.92	6.25
Arkansas	1.12	1.20	1.18	1.38	1.09
Total License States	2.13	2.13	2.14	2.18	2.17
Total Control States	1.64	1.65	1.66	1.69	1.70
Grand Total	1.98	1.98	1.99	2.03	2.03